

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**v.**

**DERON O. DYE,**

**Defendant.**

**Case No. 18-20094-CM**

**MEMORANDUM AND ORDER**

Defendant Deron O. Dye was indicted on December 4, 2018 on one count of felon in possession of a firearm and ammunition. On July 29, 2019, defendant filed a Motion to Suppress (Doc. 13) seeking suppression of the firearm. The court held an evidentiary hearing on the motion on September 4, 2019. After considering the briefing and the evidence presented at the hearing, the court is now ready to rule.

**I. Background**

On June 12, 2018, at approximately 6:30 pm, Kansas City, Kansas Police Captain Shawn Magee was standing in the parking lot of the Kansas City, Kansas Police Department Midtown Station speaking with his father who had stopped by to visit. An unknown black male approached Capt. Magee from the bus stop east of the police station. The man advised Capt. Magee that there was a black male sitting on a bench at the bus stop that had a gun on him and was smoking marijuana. He advised that the suspicious man was wearing a t-shirt, shorts, and a backpack. Surveillance video captured the conversation between Magee and the unknown informant, and the bus stop can be seen in the background. An individual is seen sitting alone on a bench near the busses. Magee testified that the unknown informant appeared nervous and fearful of being seen reporting the individual, but that he made a gesture to indicate the individual with the gun and marijuana was the man sitting at the bus stop.

Capt. Magee went inside the station to retrieve his ballistic vest and to have Kansas City, Kansas Police Sergeant Alex Bruce accompany him to the bus stop. Sgt. Bruce testified that Capt. Magee described the suspicious individual to him as “a black male, thin, dreads, wearing possibly a brown or tan shirt and cargo shorts.” As the officers went back into the parking lot, Capt. Magee got his wooden baton out of his patrol vehicle. The officers then approached the bus stop toward the individual seen sitting on the bench in the surveillance video. A bus had entered the station to the west of the bench the individual was sitting on, and the individual was facing east. Capt. Magee went to the right or south of the bus and Sgt. Bruce approached from the left or north side of the bus. As Capt. Magee came around the bus, he saw the individual sitting on the bench was wearing shorts, a t-shirt, a backpack, and was holding a blunt cigarette in his left hand that was still smoking. Capt. Magee did not smell the odor of marijuana. When Sgt. Bruce approached, he told the individual to put his hands up and keep them up. Sgt. Bruce testified that the individual kept his hands a little above his waistline and then his hands went down toward his waistband. At that point, the individual got up and ran towards the south and east away from Sgt. Bruce and directly toward Capt. Magee. Capt. Magee swung his wooden baton at the fleeing individual and struck his right hip area. He observed a multi-colored firearm with an extended magazine in the individual’s waistband. According to Capt. Magee, the individual pulled the firearm from his waistband and apparently dropped it on the ground as he continued to run away. Capt. Magee chased the individual until the man climbed over a fence approximately 300-400 yards away from the bus stop. Sgt. Bruce was able to recover the discarded firearm. The individual was later apprehended and identified as defendant.

## **II. Analysis**

Defendant moves to suppress the firearm recovered by Sgt. Bruce, arguing that he was unlawfully seized without reasonable suspicion. Defendant claims that the officers lacked sufficient information

connecting him to the allegations made by the informant, and a generalized suspicion of wrongdoing is not enough to justify a seizure. Defendant claims he was seized both when he submitted to the officers' show of authority when he raised his hands in response to Sgt. Bruce's order, and when he was struck by Capt. Magee's baton.

Under the Fourth Amendment, a seizure occurs only if "in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." *United States v. Harris*, 313 F.3d 1228, 1234 (10th Cir. 2002). A seizure does not occur simply because an officer approaches an individual to ask questions or request identification, rather, "a seizure requires either the use of physical force by the police officer or submission by the individual to the police officer's assertion of authority." *Id.* An officer, however, is permitted to intrude into an individual's constitutionally protected interests if he is able to point to "specific and articulable facts, which taken together with rational inferences from those facts, reasonably warrant that intrusion." *Terry v. Ohio*, 392 U.S. 1, 21 (1968). Brief investigatory stops are constitutional if "justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity," or, in other words, the officer must have "reasonable suspicion to believe that criminal activity may be afoot." *United States v. Simpson*, 609 F.3d 1140, 1146 (10th Cir. 2010). Reasonable suspicion is more than a "hunch," but is "obviously less demanding than that for probable cause." *United States v. Sokolow*, 490 U.S. 1, 7 (1989). Reasonable suspicion "does not depend on any one factor, but on the totality of the circumstances," and courts must "judge the officer's conduct in light of common sense and ordinary human experience." *Simpson*, 609 F.3d at 1146.

The United States Supreme Court has recognized that "there are situations in which an anonymous tip, suitably corroborated, exhibits 'sufficient indicia of reliability to provide reasonable suspicion to make the investigatory stop.'" *Florida v. J.L.*, 529 U.S. 266, 270 (2000). In *J.L.*, the Court

held that a tip from an anonymous caller who reported to the police that “a young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun,” without more, was not sufficient to justify an officer’s stop and frisk of that person. *Id.* at 268. The Court found that the anonymous call provided no predictive information and that police had no means to test the caller’s knowledge or credibility. *Id.* at 271. And while an accurate description of a person and their location is reliable in that “[i]t will help the police correctly identify the person whom the tipster means to accuse,” the tip does not confirm that the tipster “has knowledge of concealed criminal activity.” *Id.* Reasonable suspicion requires that a tip “be reliable in its assertion of illegality, not just in its tendency to identify a determinate person.” *Id.*

The Court has also mentioned, however, that a tipster’s eyewitness knowledge of criminal activity may entitle his tip to greater weight. *See Illinois v. Gates*, 462 U.S. 213, 234 (1983); *see also Navarette v. California*, 572 U.S. 393, 399 (2014) (finding that an eyewitness knowledge of alleged criminal activity “lends significant support to the tip’s reliability.”).

Here, the evidence shows that the informant approached the officers in the parking lot of the police station. He accurately described defendant and his body language indicated he was gesturing toward defendant, who could be seen sitting on a bench at the nearby bus stop. He told the officers that he saw that defendant was smoking marijuana and had a gun, and when Capt. Magee approached defendant, he could see a blunt cigarette in his hand that was still smoking. Based on the evidence from the surveillance video, and the testimony of the officers, there was little question which individual the informant was referring to. And the informant’s report that defendant was smoking marijuana was corroborated when Capt. Magee saw him holding a smoking blunt cigarette. Although Capt. Magee did not report the odor of marijuana, the fact the defendant was holding a blunt cigarette at least gave him reasonable suspicion that the informant’s tip was accurate. The court finds that the informant’s tip was

sufficiently reliable, and that Capt. Magee and Sgt. Bruce had the necessary reasonable suspicion to approach defendant to investigate potential criminal activity. Therefore, any actions the officers took after approaching defendant do not constitute an illegal seizure. For these reasons, the court denies defendant's motion to suppress.

**IT IS THEREFORE ORDERED** that defendant's Motion to Suppress (Doc. 13) is denied.

Dated September 16, 2019, at Kansas City, Kansas.

s/ Carlos Murguia  
**CARLOS MURGUIA**  
**United States District Judge**